

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Civil File No.: 17-cv-04998 (MJD/ECW)

Terry Nelson and Clark Anderson as
Trustees of the Painters and Allied
Trades District Council No. 82 Health
Care Fund, et al,

Plaintiffs,
vs.

Elegance Painting & Finishing LLC,

Defendant.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER FOR
ENTRY OF JUDGMENT**

This matter came on for hearing before the undersigned on October 11, 2018, on Plaintiffs' Motion for Entry of Judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure. Christy E. Lawrie of McGrann Shea Carnival Straughn & Lamb, Chartered, appeared for and on behalf of the Plaintiffs. There was no appearance on behalf of the Defendant.

FINDINGS OF FACT

1. Plaintiffs filed the Complaint in this matter on November 2, 2017. The Complaint was personally served upon the Defendant Elegance Painting & Finishing LLC ("Elegance Painting") on November 7, 2017.

2. Elegance Painting failed to file and serve a response or Answer to the Complaint.

3. The Clerk entered default on December 1, 2017.

4. Plaintiffs are the Trustees and Fiduciaries of the Painters and Allied Trades District Council No. 82 Health Care Fund, the Minneapolis Local 386 Drywall Finishing Industry Pension Fund n/k/a as the Painters and Allied Trades District Council 82 Defined Contribution Plan, the Finishing Trades Institute of the Upper Midwest Trust Fund, the Painters and Allied Trades Labor Management Cooperation Initiative and the Finishing Trades Institute (“Funds”).

5. The Funds are a multi-employer jointly-trusteed fringe benefit plan created and maintained pursuant to Section 302(c)(5) of the Labor Relations Management Act of 1974 (“LMRA”), as amended, 29 U.S.C § 186(c)(5).

6. The Funds are administered in accordance with the provisions of the ERISA and are exempt from federal income taxation pursuant to the Internal Revenue Code.

7. On March 28, 2016, Elegance Painting became bound to the North and South Dakota Commercial Painting, Interior Systems, and Drywall Installation and Finishing Agreement (“CBA”) with a term of January 1, 2015 through

December 31, 2017.

8. On July 15, 2016, Elegance Painting became bound to a Residential Market Recovery Addendum to the CBA which expanded the coverage of the CBA to residential projects.

9. The Residential Market Recovery Addendum provides that where a subject is covered by the CBA and not covered by the Residential Market Recovery Addendum, the CBA shall control and where a subject is specifically covered by the provisions of the Residential Market Recovery Addendum and also covered by the CBA, the terms of the Residential Market Recovery Addendum shall prevail.

10. The CBA requires Elegance Painting to contribute every month, not later than the 15th day of the following month, contributions to the Funds in an amount set forth in the CBA for each hour worked by its employees covered by the CBA or the Residential Market Recovery Addendum.

11. Further, with respect to owners who also perform work covered by the CBA and/or the Residential Market Recovery Addendum, the CBA provides that such owner/operator shall participate in the fringe benefit and industry funds by paying contributions at the applicable rate multiplied by 160 hours per month.

12. The CBA requires signatory employers like Elegance Painting to furnish an Employers Contractual Bond or other approved escrow account guaranteeing such employer's obligation to the Funds in an amount specified in the CBA.

13. The CBA provides that an employer who fails to furnish an appropriate bond or escrow account shall pay an additional ten percent of the applicable contributions rate for the Funds and that such amount is included in any liquidated damages calculation.

14. Elegance Painting failed to furnish any Employers Contractual Bond or other approved escrow account.

15. The CBA provides that any contribution payment that is not received by the due date, subjects Elegance Painting to a penalty payment of ten percent of the amount due.

16. The CBA provides that if legal action is taken to recover the amounts due the Trust Funds, Elegance Painting & Finishing shall also be required to pay all court costs, including reasonable attorney and audit fees.

17. The CBA permits the Trustees of the Funds to conduct an audit at any

time.

18. The Funds' authorized agent requested that Elegance Painting produce a complete set of payroll and employment records as specified in the CBA and Trust Agreements for the period of March 28, 2017 through September 31, 2017 ("Audit Period").

19. Elegance Painting produced its payroll and employment records for the Audit Period and the Funds' authorized agent determined there were hours worked by Elegance Painting's employees that were covered by the CBA and the Residential Market Recovery Addendum for which Elegance Painting did not submit the required contributions to the Funds.

20. Specifically, the Fund's authorized agent determined that \$58,901.90 is due and owing for unpaid contributions for the Audit Period.

21. Elegance Painting's customers submitted payments totaling \$31,286.55 to the Funds on Elegance Painting's behalf.

22. After application of these payments, \$27,615.35 remains due and owing for unpaid contributions for the Audit Period.

23. In addition, to the unpaid contributions, Elegance Painting is liable to the Funds in the amount of \$5,890.19 for failing to furnish Employers Contractual

Bond or other approved escrow account.

24. Elegance Painting is liable to the Funds in the amount of \$5,890.19 for liquidated damages.

25. Elegance Painting & Finishing is liable to the Funds in the amount of \$2,519.16 for the reasonable attorneys' fees and costs incurred by the Funds in collecting the amounts due from Elegance Painting.

CONCLUSIONS OF LAW

1. Elegance Painting is in default and the Funds are entitled to entry of judgment.

2. Elegance Painting is liable to the Funds in the amount of \$39,395.73 for unpaid contributions, bond assessment fees, and liquidated damages for the Audit Period.

3. Elegance Painting is liable to the Funds in the amount of \$2,519.16 for attorneys' fees and costs for the Audit Period.

ORDER

Based on the foregoing, and on all the files, records, and proceedings, herein
IT IS ORDERED THAT:

1. Plaintiffs' Motion for Entry of Judgment is GRANTED.

2. That judgment in the amount of \$41,914.89 be entered against Elegance Painting & Finishing LLC and in favor of Plaintiffs.

LET JUDGMENT BE ENTERED ACCORDINGLY

Dated: October 11, 2018

s/ Michael J. Davis

Michael J. Davis

United States District Court